

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID HARLAN,

RESPONDENT

vs.

APAC-MISSOURI, INC., ET AL.,

APPELLANTS

DOCKET NUMBER WD73637

DATE: December 13, 2011

Appeal from:

The Circuit Court of Lafayette County, Missouri
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Cynthia Suter, Sp.J.

Attorneys:

William L. Carr, for Respondent

Anthony L. Gosserand, for Appellant APAC-Missouri, Inc.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID HARLAN,

RESPONDENT

v.

APAC-MISSOURI, INC., ET AL.,

APPELLANTS

WD73637

Lafayette County, Missouri

Before Division Four Judges: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Cynthia Suter, Sp.J.

APAC-Missouri Inc. ("APAC") appeals from a judgment entered in the Circuit Court of Lafayette County in favor of David Harlan in a negligence action filed by Harlan related to a motorcycle accident. The accident occurred in a construction zone in which APAC had contracted with the Missouri Highway and Transportation Commission to resurface the highway. The jury found APAC negligent in failing to warn Harlan that the lanes were uneven and assessed twenty-five percent of the fault for the accident against APAC.

AFFIRMED.

Division Four holds:

(1) Viewed in accordance with the appropriate standard of review, the record contains sufficient evidence from which the jury could reasonably have found that APAC knew, or had reason to know, that the 1 3/4" uneven lane height difference it was creating was dangerous and that signs warning of that condition should have been used on the project. Testimony from APAC employees reflected an awareness of the danger posed by uneven lanes and the ability to request that MHTC authorize additional safety signs for the project. Expert testimony further established that a contractor should have known of the danger posed by the uneven lanes and that warning signs should have been posted.

(2) The record contained sufficient evidence to establish proximate cause. While APAC presented testimony indicating that MHTC had the exclusive power to determine whether a sign could be placed on the project, the jury was not required to believe that testimony, and the testimony at trial reflected that MHTC

would have taken seriously any request for additional safety signs made by APAC.

(3) The trial court's judgment properly accounted for the 5% fault assessed against Harlan.

Opinion by Joseph M. Ellis, Judge

Date: December 13, 2011

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